

Chesapeake Bay Preservation Act

§ 10.1-2100. Cooperative state-local program.

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that: (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this chapter; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this chapter.

B. Local governments have the initiative for planning and for implementing the provisions of this chapter, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this chapter, and by providing those resources necessary to carry out and enforce the provisions of this chapter.

(1988, cc. 608, 891.)

§ 10.1-2101. Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

"Board" means Chesapeake Bay Local Assistance Board.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § 10.1-2107.

"Criteria" means criteria developed by the Board pursuant to § 10.1-2107 of this chapter for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

"Secretary" means the Secretary of Natural Resources.

"State waters" means all waters, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tidewater Virginia" means the following jurisdictions:

The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

(1988, cc. 608, 891; 2005, c. 41.)

§ 10.1-2102. Chesapeake Bay Local Assistance Board established.

A. There is hereby established the Chesapeake Bay Local Assistance Board. The Board shall consist of nine Tidewater Virginia residents appointed by the Governor, subject to confirmation by the General Assembly. The Board shall consist of at least one individual from each Planning District in which there is located one or more Tidewater Virginia localities. Members of the Board shall be representative of, but not limited to, citizens with an interest in and experience with local government, business, the use and development of land, agriculture, forestry and the protection of water quality. Upon initial appointment, three members shall be appointed for four-year terms, three for three-year terms, and three for two-year terms. Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled by the Governor in the same manner as the original appointment for the unexpired portion of the term.

B. The Board shall adopt rules and procedures for the conduct of its business.

C. The Board shall elect a chairman from among its members.

D. A quorum shall consist of five members. The decision of a majority of those members present and voting shall constitute a decision of the Board; however, a favorable vote of

the majority of the Board membership is required to adopt criteria pursuant to § 10.1-2107 of this chapter or for any action taken by the Board under subdivision 8 of § 10.1-2103. If at a meeting of the Board action will be taken under subdivision 8 of § 10.1-2103 with respect to the comprehensive plan, zoning or subdivision ordinance of a county, city or town, written notice of such meeting shall be given to the governing body of the locality at least ten days in advance of the meeting.

E. The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request to the chairman of any two members. All members shall be duly notified of the time and place of any regular or other meeting at least ten days in advance of such meetings.

F. The Board shall keep a complete and accurate record of its proceedings. A copy of the record shall be available for public inspection and copying.

(1988, cc. 608, 891.)

§ 10.1-2103. Powers and duties of the Board.

The Board is responsible for carrying out the purposes and provisions of this chapter and is authorized to:

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional and state government within the Commonwealth.
2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments and federal agencies for the purpose of implementing this chapter.
3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this chapter.
4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).
5. Develop, promulgate and keep current the criteria required by § 10.1-2107.
6. Provide technical assistance and advice or other aid for the development, adoption and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this chapter.

7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 10.1-2107.

8. Ensure that local government comprehensive plans, zoning ordinances and subdivision ordinances are in accordance with the provisions of this chapter. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.

10. Take administrative and legal actions to ensure compliance by counties, cities and towns with the provisions of this chapter including the proper enforcement and implementation of, and continual compliance with, this chapter.

11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

12. Enter into contracts necessary and convenient to carry out the provisions of this chapter.

(1988, cc. 608, 891; 1997, c. 266.)

§ 10.1-2104. Exclusive authority of Board to institute legal actions.

The Board shall have the exclusive authority to institute or intervene in legal and administrative actions to ensure compliance by local governing bodies with this chapter and with any criteria or regulations adopted hereunder.

(1988, cc. 608, 891; 1997, c. 266.)

§ 10.1-2105.

Repealed by Acts 2005, c. 41, c. 2.

§ 10.1-2106. Powers and duties of Director.

A. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulations.

B. The Director shall be vested with all the authority of the Board, including the authority granted by § 10.1-2104, when it is not in session, subject to such regulations as may be prescribed by the Board.

(1988, cc. 608, 891; 1997, c. 266; 2005, c. 41.)

§ 10.1-2107. Board to develop criteria.

A. In order to implement the provisions of this chapter and to assist counties, cities and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations which establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations which establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits which can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

E. Criteria shall be adopted by July 1, 1989.

(1988, cc. 608, 891.)

§ 10.1-2108. Local government authority.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this chapter.

(1988, cc. 608, 891.)

§ 10.1-2109. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.

A. Counties, cities and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city and town in Tidewater Virginia not later than twelve months after adoption of criteria by the Board.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this chapter.

C. All counties, cities and towns in Tidewater Virginia shall have zoning ordinances which incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this chapter. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § 10.1-2107.

D. Counties, cities and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the provisions of this chapter. Counties, cities and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

E. In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision or other ordinances:

1. Any person who: (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city or town itself or its agent, the court shall direct the penalty to be paid into the state treasury.

2. With the consent of any person who: (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's

notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city or town itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

F. Localities that are subject to the provisions of this chapter may by ordinance adopt an appeal period for any person aggrieved by a decision of a board that has been established by the locality to hear cases regarding ordinances adopted pursuant to this chapter. The ordinance shall allow the aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to the circuit court.

(1988, cc. 608, 891; 1998, cc. 700, 714; 2008, c. 15.)

§ 10.1-2110. Local governments outside of Tidewater Virginia may adopt provisions.

Any local government, although not a part of Tidewater Virginia may employ the criteria developed pursuant to § 10.1-2107 and may incorporate protection of the quality of state waters into their comprehensive plans, zoning ordinances and subdivision ordinances consistent with the provisions of this chapter.

(1988, cc. 608, 891.)

§ 10.1-2111. Local government requirements for water quality protection.

Local governments shall employ the criteria promulgated by the Board to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters consistent with the provisions of this chapter.

(1988, cc. 608, 891.)

§ 10.1-2112. Advisory state review of local government decisions.

In addition to any other review requirements of this chapter, the Board shall, upon request by any county, city or town, review any application for the use or development of land in that county, city or town for consistency with the provisions of this chapter. Any such review shall be completed and a report submitted to such county, city or town within ninety days of such request.

(1988, cc. 608, 891.)

§ 10.1-2113. Effect on other governmental authority.

The authorities granted herein are supplemental to other state, regional and local governmental authority. No authority granted to a local government by this chapter shall affect in any way the authority of the State Water Control Board to regulate industrial or sewage discharges under Articles 3 (§ 62.1-44.16 et seq.) and 4 (§ 62.1-44.18 et seq.) of the State Water Control Law (§ 62.1-44.2 et seq.). No authority granted to a local government by this chapter shall limit in any way any other planning, zoning, or subdivision authority of that local government.

(1988, cc. 608, 891.)

§ 10.1-2114. State agency consistency.

All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances and subdivision ordinances that comply with §§ 10.1-2109 and 10.1-2110.

(1988, cc. 608, 891.)

§ 10.1-2115. Vested rights protected.

The provisions of this chapter shall not affect vested rights of any landowner under existing law.

(1988, cc. 608, 891.)

§ 10.1-2116.

Repealed by Acts 2004, c. 1000.